

THE HONORABLE THOMAS S. ZILLY

U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

STRIKE 3 HOLDINGS, LLC, a Delaware  
corporation,

Plaintiff,

vs.

JOHN DOE, subscriber assigned IP  
address 73.225.38.130,

Defendant.

JOHN DOE subscriber assigned IP  
address 73.225.38.130,

Counterclaimant,

vs.

STRIKE 3 HOLDINGS, LLC,

Counterdefendant.

NO. 2:17-cv-01731-TSZ

**DECLARATION OF J. CURTIS  
EDMONDSON IN SUPPORT OF  
RESPONSE TO MOTION TO  
EXTEND DEADLINES**

I, J. Curtis Edmondson, hereby declare under the penalty of perjury under the laws of the  
United States of America, the following:

1. I am counsel of record in this case. I am a member of the bar of this Court and a  
member of the Patent Bar. I have personal knowledge of the facts set forth in this declaration

DECLARATION OF J. CURTIS EDMONDSON IN  
SUPPORT OF RESPONSE TO MOTION TO EXTEND  
DEADLINES - 1

CASE No. 2:17-cv-01731-TSZ

**TERRELL MARSHALL LAW GROUP PLLC**  
936 North 34th Street, Suite 300  
Seattle, Washington 98103-8869  
TEL. 206.816.6603 • FAX 206.319.5450  
www.terrellmarshall.com

1 and could testify competently to them if called upon to do so.

2 2. Attached as Exhibit 1 is a true and correct copy of the proposed protocol I emailed  
3 to Strike 3's counsel on March 22, 2019 regarding inspection of Doe's hard drives.

4 3. A week later on Friday, March 29, 2019, I conferred telephonically with Strike  
5 3's counsel regarding the proposed protocol, along with co-counsel, Adrienne McEntee. Strike  
6 3's counsel agreed during the call to consider our proposal and get back with us the following  
7 Monday.

8 4. Attached as Exhibit 2 is a true and correct copy of the email Ms. McEntee sent to  
9 Strike 3's counsel following our March 29, 2019 telephone call.

10 5. Strike 3's counsel did not respond the following Monday regarding the proposed  
11 protocol and has not initiated a conversation regarding the analysis of Doe's computers with me  
12 (or Ms. McEntee) since March 29th.

13 6. Attached as Exhibit 3 is a true and correct copy of excerpts from John Doe's  
14 deposition. The portions of the transcript that reference names, addresses, and emails have been  
15 redacted to protect the identity of Doe and his family, friends, and neighbors.

16 7. Doe anticipates serving additional discovery requests to Strike 3 this week  
17 following Strike 3's recent deposition testimony. Because of Strike 3's history of declining to  
18 produce data and documents in response to requests for production, Doe joins in Strike 3's  
19 request to extend the deadline to bring discovery motions.

20 I declare under penalty of perjury under the laws of the United States that the foregoing  
21 is true and correct.

22 EXECUTED this 24th day of April, 2019, at Hillsboro, Oregon.

23  
24 /s/ J. Curtis Edmondson, WSBA #43795  
J. Curtis Edmondson, WSBA #43795

CERTIFICATE OF SERVICE

I, Adrienne D. McEntee, hereby certify that on April 24, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Bryan J. Case, WSBA #41781  
Email: bcase@foxrothschild.com  
FOX ROTHSCHILD LLP  
1001 Fourth Avenue, Suite 4500  
Seattle, Washington 98154  
Telephone: (206) 624-3600  
Facsimile: (206) 389-1708

Lincoln D. Bandlow, *Admitted Pro Hac Vice*  
Email: lbandlow@foxrothschild.com  
FOX ROTHSCHILD LLP  
10250 Constellation Blvd., Suite 900  
Los Angeles California 90067  
Telephone: (310) 598-4150  
Facsimile: (310) 556-9828

John C. Atkin, *Admitted Pro Hac Vice*  
Email: jatkin@atkinfirm.com  
THE ATKIN FIRM, LLC  
55 Madison Avenue, Suite 400  
Morristown, New Jersey 07960  
Telephone: (973) 285-3239

*Attorneys for Plaintiff*

Joshua L. Turnham, WSBA #49926  
E-mail: joshua@turnhamlaw.com  
THE LAW OFFICE OF JOSHUA L. TURNHAM PLLC  
1001 4th Avenue, Suite 3200  
Seattle, Washington 98154  
Telephone: (206) 395-9267  
Facsimile: (206) 905-2996

*Attorneys for Non-Party Donald Isaksen, Jr.*

1 DATED this 24th day of April, 2019.

2 TERRELL MARSHALL LAW GROUP PLLC

3 By: /s/ Adrienne D. McEntee, WSBA #34061

4 Adrienne D. McEntee, WSBA 34061

5 Email: amcentee@terrellmarshall.com

6 936 North 34th Street, Suite 300

7 Seattle, Washington 98103-8869

8 Telephone: (206) 816-6603

9 Facsimile: (206) 319-5450

10 *Attorneys for Defendant*

**— EXHIBIT 1 —**

THE HONORABLE THOMAS S. ZILLY

U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

STRIKE 3 HOLDINGS, LLC, a Delaware  
corporation,

Plaintiff,

vs.

JOHN DOE, subscriber assigned IP  
address 73.225.38.130,

Defendant.

NO. 2:17-cv-01731-TSZ

**[PROPOSED] DEFENDANT’S  
ESI PROTECTIVE ORDER ON  
COMPUTERS AND HARD DRIVES**

JOHN DOE subscriber assigned IP  
address 73.225.38.130,

Counterclaimant,

vs.

STRIKE 3 HOLDINGS, LLC,

Counterdefendant.

The parties hereby stipulate to the following provisions regarding the discovery of  
electronically stored information (“ESI”) for the Defendant in this matter:

## A. General Principles

1. An attorney's zealous representation of a client is not compromised by conducting discovery in a cooperative manner. The failure of counsel or the parties to litigation to cooperate in facilitating and reasonably limiting discovery requests and responses raises litigation costs and contributes to the risk of sanctions.
2. The proportionality standard set forth in Fed. R. Civ. P. 26(b)(1) must be applied in each case when formulating a discovery plan. To further the application of the proportionality standard in discovery, requests for production of ESI and related responses should be reasonably targeted, clear, and as specific as possible.

## B. ESI Disclosures

Within 30 days after the Rule 26(f) conference, or at a later time if agreed to by the parties, each party shall disclose:

1. Custodians. The five custodians most likely to have discoverable ESI in their possession, custody or control. The custodians shall be identified by name, title, connection to the instant litigation, and the type of the information under his/her control.
2. Non-custodial Data Sources. A list of non-custodial data sources (e.g. shared drives, servers, etc.), if any, likely to contain discoverable ESI.
3. Third-Party Data Sources. A list of third-party data sources, if any, likely to contain discoverable ESI (e.g. third-party email and/or mobile device providers, "cloud" storage, etc.) and, for each such source, the extent to which a party is (or is not) able to preserve information stored in the third-party data source.
4. Inaccessible Data. A list of data sources, if any, likely to contain discoverable ESI (by type, date, custodian, electronic system or other criteria sufficient to specifically identify the data source) that a party asserts is not reasonably accessible under Fed. R. Civ. P. 26(b)(2)(B). *[Section (C)(3)(a)(i) below sets forth data sources and ESI*

1 *which are not required to be preserved by the parties. Those data sources and ESI do*  
 2 *not need to be included on this list.]*

3 DEFENDANT'S DESIGNATION PURSUANT TO SECTION B.

4 Plaintiff made a document request for all computers and electronic media in possession  
 5 and control of Defendant.

6 1. Defendant John Doe is a retired cop who in his retirement purchased computers  
 7 and fixed them up with the idea of providing them to non-profits as a hobby. Defendant John  
 8 Doe has collected all electronic media and computers requested by the Plaintiff during the  
 9 period of infringement and has turned them over to counsel for inspection. The number of  
 10 computers and hard drives are approximately 100 and are in various states of operation.  
 11 Defendant John Doe is the sole custodian. Defendant counsel is in possession of the hard drives  
 12 and other media.

13 2. Defendant does not believe there is any non-custodial data sources.

14 3. Third Party data sources – This may include email servers for two email  
 15 accounts. Defendant has searched those email accounts for requested documents.

16 4. Inaccessible Data – Some of the computers and hard drives may have failed or  
 17 were purchased in a failed condition.

18  
 19 **C. Preservation of ESI**

20 The parties acknowledge that they have a common law obligation to take reasonable  
 21 and proportional steps to preserve discoverable information in the party's possession, custody  
 22 or control. With respect to preservation of ESI, Defendant has:

23 1. Gathered all computers and hard drives in possession during the period of infringement.

24 As noted, this is approximately 100 items.

25 2. Identified the majority of the computers by model and S/N, and the same with  
 26 the hard drives.



3. These categories of Defendant's ESI need not be preserved:

- a. Deleted, slack, fragmented, or other data only accessible by forensics.
- b. Random access memory (RAM), temporary files, or other ephemeral data that are difficult to preserve without disabling the operating system.
- c. On-line access data such as temporary internet files, history, cache, cookies, and the like.
- d. Data in metadata fields that are frequently updated automatically, such as last-opened dates (see also Section (E)(5)).
- e. Back-up data that are substantially duplicative of data that are more accessible elsewhere.
- f. Server, system or network logs.
- g. Data remaining from systems no longer in use that is unintelligible on the systems in use.
- h. The computers and hard drives located at Counsel's office in Hillsboro, Oregon, stored in numerous plastic containers.

#### DEFENDANT'S DESIGNATION PURSUANT TO SECTION C

4. Defendant has collected all requested computers and media and has stored them at counsel's office.

5. Defendant will keep the computers and media in native format as the cost for a complete forensic image of each drive and a string search of each drive is disproportionately large (est \$ 50,000.00).

#### **D. Privilege**

1. With respect to privileged or work-product information generated after the filing of the

complaint, parties are not required to include any such information in privilege logs.

2. Subject to STEP “E”, Defendant will identify those computers that may have been used to communicate with this attorneys. Steps will be taken to identify those communications that are privileged.

#### **E. ESI Discovery Procedures**

Plaintiff contends that their IPP software has recorded “File Hashes” that uniquely identify an infringed movie that are approximately 20-40 minutes in length.

Plaintiff has provided, in response to Defendant’s discovery requests, data that their German monitoring system that is used to purportedly identify infringers. This data provided by the Plaintiff’s monitoring software is:

Work	Hash	Site
1	1BC8C1ADCAA75C3EC9408C8CCBF5147863205E6C	Tushy
2	0326E8923C58852725F5A7857833A4CD3E715289	Tushy
3	039F4779148D3E374D990283A83AC46A0219DAE9	Vixen
4	0CAB7415EAE003A2C3835DE5FC716759A49040B9	Tushy
5	0CDEB18021838E8E2A694A7D16D9A45366CFABB6	Blacked
6	1278F4C4BF0B45678418F6CC8F8844DE4AB68C83	Tushy
7	1487A26EAAAD70318258AB9F506506A8F293533A	Blacked
8	18A6F7D0E24D4FA3CC1589DE496D1AD9433CF09B	Blacked
9	1A032CB38BB2AF87DAF2B239A1A17B6C713EBC26	Blacked
10	1C2C06D480942F4FE7FDCED4759E93805E02B54B	Tushy
11	1D1B18BB0C921D6E1A6D148E4542257B42A2469F	Tushy
12	1D63168E762F9CB41AE4DBD6646599AD0EFF3911	Blacked
13	1D7E521CD7368013A7F1B28494A2AC43D8F99F0E	Vixen
14	1D7E721AC3B8D955BBCAD8D62F57AF030BD1F315	Vixen
15	22883186DAB5FCA92C8513AD939652BCB867FD5C	Tushy
16	22C377CC65B1695E6470BFAF967C4C825391EF90	Blacked
17	24D6E127081B069994E81CA544B8FF3E3A0A33D3	Tushy
18	258961E123E520633A96CDF11E8E6F60E233C816	Vixen
19	289FE7D65DFCFACB416832D12862105A2762841A	Blacked
20	31577E16E1B68BF13F30BE538E1BAF66E224726A	Tushy

1	21	322F6ABAB019761A6FF3C1211AF75B28137F013F	Vixen
	22	34452073A3328CE2AF5FC73A5A8DDD4141E85B4A	Vixen
2	23	374A3B65D604113BB3880FDACE83FD1EFED3CA7C	Tushy
3	24	3945FEF635D609C3FB77DD4762FC2570E7E12D7C	Blacked
	25	3F3D4931127C380DD0AA05C298E26438267560BB	Vixen
4	26	408577469D1675504E89F205C619738007D08DD9	Blacked
	27	4125860EC76C1E0880F652DA94EB84D375A64436	Tushy
5	28	464AB452DA8258FA23BA74830F0D57EE7CA518C5	Tushy
6	29	48F5E3FE474EA76DE23D7D0A8F27ADA15F5C98D7	Blacked
	30	4B86BC16D0E5A0983C578B61ED87BC62C55B116A	Vixen
7	31	4F0D3D0FD3F88791F4933080453A052BE6924F22	Tushy
	32	4FAE423CFA8C54409A4658429D7CB2B3E0F2E8B1	Vixen
8	33	4FF62836FC3C509617EE5DE7658EAABE045C0BA1	Tushy
9	34	5003D85013A07470D85A3250EF4B3393B6E2CB04	Tushy
10	35	5176733783D1199D43060681D7AE2D4E3B5C9AF9	Blacked
	36	53FF1B4BD8FB69630FE0A67611FE747F902F6874	Vixen
11	37	5A06B4EA4DB48984499F2E9EA7213220E835089D	Blacked
	38	5AA7FC6E46AEF9EC1227A939EADB3351AD495F12	Vixen
12	39	5C208E2ABF6083135CA52776A02D87442F215D60	Tushy
13	40	5F25F5C8970A1123950D8543F0C954308ECC9D12	Tushy
	41	6503CB2EAECE7FA2F1D71B98E41D6D845BF7B794	Vixen
14	42	6960957E412263AA671D4F7A15737527D71A7C08	Tushy
15	43	69AC2D8751ABF0FED5C443A1CE77A7C7529B7AC9	Vixen
	44	6A53ECB874B094837053EB7B7142560F0A85A9C2	Vixen
16	45	6B9175E9708A1BE765BBDC6582A68A12E44A33E3	Vixen
17	46	72F519FE9EED3C466979E55CFEBF253309A8106C	Vixen
	47	74C66B184CB3F25F69326EF0C5529CDB680A8C47	Vixen
18	48	792198F0F41E1FFA44A67E62F451EC11B9B692EF	Vixen
19	49	7E4981D21DDD4B8D9EB5905B1B8A95461915A160	Blacked
	50	82EC6E9F2A9287FD59C2B571FDC0CDED7EDDBB81	Blacked
20	51	8519F3BB18D38EB8472CD07987B1BC2224E7EC22	Vixen
21	52	88D30B83D9E749F514380A5F2E9C3E876CF55431	Tushy
	53	8D906EA439B8BF052A8D68240F71C6D9ACE1E17A	Vixen
22	54	8F55C47AC0C8FED6F30E2C094965B3CF4749FA41	Vixen
23	55	921AED6337A58B159CFAF9DADDFE2D91CDFF8AB3	Tushy
	56	94E00EDACF46F8763B4B28A29BEB83473AC2BA8E	Blacked
24	57	9B5E94F7A0C627798E8020DFAA9A28609D1AB82A	Tushy
	58	9C80B087C925D30BA01F72FC0EAA8D8EAADF588A	Blacked
25	59	9D5513F0563852D9FB73EDC7D6318A6BB04334D9	Tushy
26	60	9E77DF7FCCB30D04DC6500C39CC3EF0AA2B48257	Blacked
27	61	ABC004062B9F9CF37E9A3A57F4BEA161154EECAE	Vixen

62	ABDFB02F5D20E29C32ABCE90A8478787DDA3C11D	Tushy
63	AE6A89DD0FB4978EAC561028F9FB06AA0A8D7E6A	Tushy
64	AFA4C44023577E2A90E1CFA8DB69A6F5D035B1D2	Blacked
65	B2EC2056C7699F25A118F23E36BB74FC7D3B7131	Vixen
66	B80F62F292E7B77184DC0BCF80ECE23CF7B23D15	Tushy
67	BA56E328AE2DBA8A20B327451656293E37FDAE35	Blacked
68	C496C2BFE4C6D994F43DC665F2CBEE16FE85777A	Tushy
69	C59734C1DC4D87F563ABE2D6E371C12FD12FC7D9	Blacked
70	C6965A70345AC1C86DD34737BF381734CA301655	Vixen
71	D2B9C8834073E3BF4B55F7BF45C7EA7BE5903569	Blacked
72	DB6040CB19308F376554AC18F5C883139311322D	Blacked
73	DCE0631B0833B899B8A4C577203A87AD00BD2B8B	Blacked
74	DCE1E033042DA8E7CFC7CEC42B7D21201BEDFD57	Tushy
75	E132114F31A37161B83D12BCE6320B65DE025C9B	Vixen
76	E1C14843DC58F3CB2CCB7383B242E4EE8D32363B	Tushy
77	E272AF63D15A4277BF857E93B225717C76F3DA9D	Tushy
78	E4BB4B0185636612E25A2955F474B4494789F63C	Blacked
79	E69BB37CE99BE570CC9EB659F45DDEF6E740E3BE	Blacked
80	E8910563DE2084C48C6A8C5801457339745A09FA	Vixen
81	EC31FAD9EF2492EACCD767B4A6E207BBF2765F0E	Blacked
82	F1132ADEB75DD2EA99B249DD70902C74E9DA7884	Tushy
83	F28E401CBB99CFB32E0808B7662BC50A9C5F64AD	Blacked
84	F8A92532C263D3E3497FF27A3FE569FF7BF15E37	Blacked
85	F8FEB2EE6C17B37610C5B2AE85F0266CB0C5C5BD	Blacked
86	FF7A5EE06C927438A3CAABC69D774D9CEACA8B9F	Tushy
87	FFD7D4C0A301487B3A11CBF1B3FC16410D42AEA0	Vixen

PCAP – Packet Capture Data (raw data files from the film). Within each movie is at least 16 KB of raw movie data stored in a PCAP. Each raw movie data file has an associated “.torrent” file that is unique to each hash.

- i) .torrent files – A relatively small file that linked to a “torrent site”.
- ii) Movie Name – The title of the movie as recorded at the Copyright Office
- iii) Infringed File Name. – The file name
- iv) Actual Movie Title
- v) The terms “Backed”, “Tushy”, “Vixen”

1  
2  
3       1.       On-site inspection of electronic media.

4       Computers will be first inspected by the Defendant's technician according to the  
5 PHASE 1 review below. To minimize cost, inspection will be done by a computer technician.

6       2.       Search methodology.

7       The computers and other media will be searched according to Defendant's PHASE I  
8 and PHASE II procedures below.

9       3.       Format.

10       The format produced will be a native file format that will probably then be reproduced  
11 in a PDF format in readable form. Evidence will be kept in native and

12       4.       De-duplication. The parties may de-duplicate their ESI production across  
13 custodial and non-custodial data sources after disclosure to the requesting party.

14       5.       Metadata fields. If the requesting party seeks metadata, the parties agree that  
15 only the following metadata fields need be produced: document type; custodian and duplicate  
16 custodians; author/from; recipient/to, cc and bcc; title/subject; file name and size; original file  
17 path; date and time created, sent, modified and/or received; and hash value.

18  
19  
20       DEFENDANT'S PHASE 1 REVIEW – COMPUTER AND MEDIA CULLING

21       6.       For computers that have a hard drive, the computers will be "booted" and the  
22 Defendant's technician will use an accepted forensic tool, such as X-RAYS "WinHex" to inspect  
23 the drives. (Cost approx. \$ 500.00) A computer technician (est cost \$ 40.00 per hour) will do a  
24 pattern match on each of the five (5) search strings provided by the Plaintiff for the computer  
25 hard drive(s.) to Defendant's technician. The date and time of the analysis will be recorded. If a  
26  
27

1 match is found, then Defendant technician will identify the match and isolate that computer for  
2 PHASE 2 REVIEW.

3 7. If there is an external hard drive or other media, then the hard drive will be  
4 installed so that it can be read by the forensic tool.

5 8. To limit burden and costs, this PHASE 1 REVIEW will be performed by  
6 someone with the skill of a computer technician hired by the Defendant.

7 9. It is estimated that PHASE I will take 40 hours (approx. 20-30 minutes per  
8 computer).

9 10. If a computer is inoperable or a hard drive does not work, then this will be  
10 noted.

11  
12 DEFENDANT’S PHASE 2 REVIEW – LIKELY COMPUTER SOURCES

13 11. The isolated drives identified in the PHASE 1 REVIEW will be available for a  
14 Plaintiff’s computer expert who will do a further review according to the following protocol at  
15 Defendant’s counsel’s office in Hillsboro, Oregon or in Seattle, Washington. The further review  
16 will allow the expert to search for an additional ten (10) “Search Strings” that are from the  
17 following data sources:

- 18 a. Hash Hex Identifier Listed Above;  
19 b. 16 KB Raw Data Block from a PCAP;  
20 c. Infringed Movie Title; and/or  
21 d. Actual Movie Title.  
22 e. Identification of the particular torrent client identified by Plaintiff’s IPP  
23 monitoring software.

**F. Discovery Disputes**

In the event there are discovery disputes, counsel will meet informally in good faith basis to try and stipulate to issues. Absent resolution, the parties will ask for an informal conference with a discovery magistrate to resolve any issues.

DATED: \_\_\_\_\_

Plaintiff's Counsel

Defendant's Counsel

By \_\_\_\_\_ By \_\_\_\_\_

**ORDER**

Based on the foregoing, IT IS SO ORDERED.

DATED: \_\_\_\_\_

\_\_\_\_\_  
The Honorable \_\_\_\_\_

UNITED STATES DISTRICT JUDGE

**— EXHIBIT 2 —**



## Adrienne McEntee

---

**From:** Adrienne McEntee  
**Sent:** Friday, March 29, 2019 4:45 PM  
**To:** 'Bandlow, Lincoln D.'; Case, Bryan J.; J. Curtis Edmondson  
**Subject:** RE: Strike 3 v. Doe - Model ESI Agreement

Lincoln,

Thank you for the call today. We understand that you are going to think about the ESI protocol a bit more and get back with us on Monday.

Also, we would like to schedule all expert depositions the week of April 22<sup>nd</sup>. We believe we can meet the court's deadlines if we conduct the depositions via Skype.

Finally, this email confirms that you will identify the Rule 30(b)(6) witness(es) next week as well. Please also provide any objections to the notice by April 5<sup>th</sup>.

Adrienne D. McEntee

**Terrell | Marshall Law Group PLLC**

936 N 34th Street, Suite 300 | Seattle, WA 98103

T 206.816.6603 | F 206.319.5450

---

**From:** Bandlow, Lincoln D. <lbandlow@foxrothschild.com>  
**Sent:** Tuesday, March 26, 2019 7:50 PM  
**To:** Adrienne McEntee <amcentee@terrellmarshall.com>; Case, Bryan J. <bcase@foxrothschild.com>; J. Curtis Edmondson <jcedmondson@edmolaw.com>  
**Subject:** RE: Strike 3 v. Doe - Model ESI Agreement

Bryan is unavailable but I can do the call. I have a deposition the first half of the day, so Friday at 4:00 p.m.?

**Lincoln Bandlow**

Partner

**Fox Rothschild LLP**

10250 Constellation Blvd., Suite 900

Los Angeles, CA 90067

(310) 228-2913 - direct

(310) 556-9828- fax

[lbandlow@foxrothschild.com](mailto:lbandlow@foxrothschild.com)

[www.foxrothschild.com](http://www.foxrothschild.com)

---

**From:** Adrienne McEntee <amcentee@terrellmarshall.com>  
**Sent:** Tuesday, March 26, 2019 3:11 PM  
**To:** Case, Bryan J. <bcase@foxrothschild.com>; J. Curtis Edmondson <jcedmondson@edmolaw.com>

**Cc:** Bandlow, Lincoln D. <[bandlow@foxrothschild.com](mailto:bandlow@foxrothschild.com)>

**Subject:** [EXT] RE: Strike 3 v. Doe - Model ESI Agreement

Bryan, Curt and I would like to meet and confer with you regarding the revisions to our proposed ESI order. Are you available on Friday?

Adrienne D. McEntee

**Terrell | Marshall Law Group PLLC**

936 N 34th Street, Suite 300 | Seattle, WA 98103

T 206.816.6603 | F 206.319.5450

---

**From:** Case, Bryan J. <[bcase@foxrothschild.com](mailto:bcase@foxrothschild.com)>

**Sent:** Monday, March 25, 2019 4:27 PM

**To:** J. Curtis Edmondson <[jcedmondson@edmolaw.com](mailto:jcedmondson@edmolaw.com)>; Case, Bryan J. <[bcase@foxrothschild.com](mailto:bcase@foxrothschild.com)>; Adrienne McEntee <[amcentee@terrellmarshall.com](mailto:amcentee@terrellmarshall.com)>

**Cc:** Bandlow, Lincoln D. <[bandlow@foxrothschild.com](mailto:bandlow@foxrothschild.com)>

**Subject:** RE: Strike 3 v. Doe - Model ESI Agreement

Curt,

In an effort to work cooperatively, attached are Strike 3's edits to the ESI agreement you sent on Friday. Please let us know if you have any changes or disagreements with the attached. If so, counsel should schedule a discovery conference to discuss.

Regards,

Bryan

**Bryan Case**

Partner

**Fox Rothschild LLP**

Direct: (206) 389-1643

Cell: (425) 890-5112

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**From:** J. Curtis Edmondson <[jcedmondson@edmolaw.com](mailto:jcedmondson@edmolaw.com)>

**Sent:** Friday, March 22, 2019 5:53 AM

**To:** Case, Bryan J. <[bcase@foxrothschild.com](mailto:bcase@foxrothschild.com)>; Adrienne McEntee <[amcentee@terrellmarshall.com](mailto:amcentee@terrellmarshall.com)>

**Cc:** Bandlow, Lincoln D. <[bandlow@foxrothschild.com](mailto:bandlow@foxrothschild.com)>; [jcedmondson@edmolaw.com](mailto:jcedmondson@edmolaw.com)

**Subject:** [EXT] Re: Strike 3 v. Doe - Model ESI Agreement

**Importance:** High

Bryan and Lincoln,

Attached is our proposed ESI protective order. When this case started, I proposed that we discuss ESI and there was not much of a response from your side. Now that we are down to the wire, I have put together a reasonable protocol in view of your remaining claims (of which there are none) and your affirmative defenses (of which there are a few). I have already spent a significant amount of time collecting and organizing these computers.

The number of computers being produced is a result of your overly broad discovery requests, which are cut/paste from the discovery requests that Malibu Media would send out from the Lipscomb law firm. These discovery requests were designed by the Lipscomb firm to increase the litigation costs to the defendant and force a settlement.

I have crafted a cost effective ESI order where Defendant will bear the initial cost of inspecting computers. The majority of these computers were bought from Goodwill and eBay and may still have the prior owners data on them.

Please let me know if my ESI order is acceptable. Your ESI order will not work as it is overly broad, imposes large unnecessary costs, and is disproportionate to what is needed to prove your affirmative defenses.

B. Regards,

J. Curtis Edmondson, Patent Attorney | Edmondson IP Law  
USPTO 57027 | CA SBN 236105 | WA SBN 43795 | DC BAR NO 998407 | CA PE 13377 | WA PE 43728  
Venture Commerce Center, 3699 NE John Olsen Ave, Hillsboro OR 97124  
ph: (503) 336-3749 | fax: (503) 482-7418  
[jcedmondson@edmolaw.com](mailto:jcedmondson@edmolaw.com) | [www.edmolaw.com](http://www.edmolaw.com)



On March 22, 2019 at 12:28 AM "J. Curtis Edmondson" <[jcedmondson@edmolaw.com](mailto:jcedmondson@edmolaw.com)> wrote:

Bryan,

I am reviewing your proposed edits model ESI agreement. I have taken the model ESI agreement and tailored it to this computer/ hard drive issue. I should have our draft to you by tomorrow.

In Best Regards,

J. Curtis Edmondson, Patent Attorney | Edmondson IP Law  
USPTO 57027 | CA SBN 236105 | WA SBN 43795 | DC BAR NO 998407 | CA PE 13377 | WA PE 43728  
Venture Commerce Center, 3699 NE John Olsen Ave, Hillsboro OR 97124  
ph: (503) 336-3749 | fax: (503) 482-7418  
[jcedmondson@edmolaw.com](mailto:jcedmondson@edmolaw.com) | [www.edmolaw.com](http://www.edmolaw.com)



On March 21, 2019 at 8:40 PM "Case, Bryan J." <[bcase@foxrothschild.com](mailto:bcase@foxrothschild.com)> wrote:

Adrienne and Curt,

Attached please find our edits to the model ESI agreement. Please let us know if you have any changes ASAP so we can move forward with discovery without further delay, in particular inspection of Defendant's computer devices you've disclosed.

Bryan

**Bryan Case**

Partner

**Fox Rothschild LLP**

1001 Fourth Avenue, Suite 4500

Seattle, Washington 98154-1192

Direct: (206) 389-1643

Cell: (425) 890-5112

Fax: (206) 389-1708

[bcase@foxrothschild.com](mailto:bcase@foxrothschild.com)

[www.foxrothschild.com](http://www.foxrothschild.com)

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**— EXHIBIT 3 —**

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

STRIKE 3 HOLDINGS, LLC, a Delaware	)	
corporation,	)	
	)	
Plaintiff,	)	
	)	Case No.
vs.	)	2:17-cv-01731-TSZ
	)	
JOHN DOE, subscriber assigned IP	)	
address 73.225.38.130,	)	
	)	
Defendant.	)	

VIDEOTAPED DEPOSITION OF [REDACTED]

April 9, 2019

10:01 a.m.

Seattle, Washington

Reported by:  
Mark Hovila, CCR, CM  
CCR No. 2599  
Job No. 790669

EXAMINATION

BY MR. BANDLOW:

Q. [REDACTED], what is your middle name?

A. [REDACTED]

Q. It is not [REDACTED]?

A. No.

Q. Is your son's middle name [REDACTED]?

A. No.

Q. Your middle name is not [REDACTED]?

A. No.

Q. Is your son's middle name [REDACTED]?

A. No.

Q. What is your son's middle name?

A. [REDACTED]

Q. His middle name is [REDACTED]?

A. Yes.

Q. Have you ever had your deposition taken  
before?

A. No.

Q. Have you ever given testimony in a court of  
law before?

A. Yes.

Q. Is that in your capacity in law enforcement?

A. Yes.

Q. Have you ever given testimony about Internet



1 A. Losartin, potassium, hydrochlorothiazide,  
2 verapamil, and paroxetine HCL.

3 Q. How is it you think that might affect your  
4 ability to give your best testimony today?

5 A. I'm just taking those medications.

6 Q. Okay. If you feel any reason you need to  
7 take a break or gather yourself, that's fine, just let  
8 me know. What is your date of birth?

9 A. [REDACTED] 1944.

10 Q. What's your current home address?

11 A. [REDACTED]  
12 [REDACTED].

13 Q. How long have you lived at that address?

14 A. Since 1977.

15 Q. And you've actually lived at that one  
16 address from '77 to the present?

17 A. Built the house and have lived in it ever  
18 since.

19 Q. Have you or your son -- well, strike that.

20 Has your son ever lived at [REDACTED]

21 [REDACTED]?

22 A. No.

23 Q. Has your son ever lived at [REDACTED]

24 [REDACTED]?

25 A. I don't know.

1 Q. Has your son ever lived in Portland?

2 A. No.

3 Q. Okay. Has your son ever lived at [REDACTED]

[REDACTED] ?

5 A. Yes.

6 Q. When did he live at that address?

7 A. I don't know the address, I know -- well,

8 I'm not sure.

9 Q. Does your son live with you now?

10 A. On and off, yes.

11 Q. Is there any other address you know your son  
12 to live in now? Because you said on and off.

13 A. When he leaves home, I don't know. Can I --

14 MS. McENTEE: Did you have more to add to  
15 that answer?

16 A. Well, I know that he's stayed at my  
17 daughter's.

18 BY MR. BANDLOW:

19 Q. He also sometimes stays at your daughter's  
20 house?

21 A. Yes.

22 Q. And you own your present home, correct?

23 A. Yes.

24 Q. From August of 2016 through December of  
25 2017, who lived in your home?

1 A. My wife and I, my son off and on.

2 Q. No one else?

3 A. Yes. My brother-in-law.

4 Q. Anybody else?

5 A. Not -- not lived, no.

6 Q. Okay. Obviously you've had visitors at your  
7 house.

8 A. Lots of visitors, yes.

9 Q. And just for reference, what is your wife's  
10 first name?

11 A. [REDACTED].

12 Q. [REDACTED]. Okay. And your daughter's first  
13 name?

14 A. [REDACTED]

15 Q. [REDACTED] And the brother-in-law's first  
16 name?

17 A. [REDACTED]

18 Q. [REDACTED]. Okay. Do you currently have an email  
19 address?

20 A. Yes, I do.

21 Q. What is that email address?

22 A. [REDACTED]

23 Q. Is that the only email address you currently  
24 have?

25 A. No.

1 Q. What others do you have?

2 A. [REDACTED]

[REDACTED] . And you want the --

4 Q. Is there any others?

5 A. Yes.

6 Q. What else?

7 A. It's [REDACTED]

8 Q. Okay. Any others?

9 A. No.

10 Q. How long have you had the

11 [REDACTED] email address?

12 A. Since Comcast bought the previous AT&T out.

13 Q. Do you know when that was?

14 A. No.

15 Q. Okay.

16 A. Long time ago.

17 Q. How long have you had the [REDACTED] address?

18 A. I would guess 15 years.

19 Q. And how long have you the Gmail address?

20 A. Within -- less than a year.

21 Q. Was there a reason you set up the additional

22 [REDACTED] email?

23 A. Yes it's an email that I use on my cell

24 phone.

25 Q. Was there a particular reason you set up the

1 [REDACTED] email address?

2 A. Yes. I used to run an online [REDACTED] site.

3 Q. [REDACTED], the fish?

4 A. Fish, yes.

5 Q. What do you mean by run a site?

6 A. Well, I guess managed the --

7 Q. Is it a website dedicated to people

8 interested in [REDACTED] fish?

9 A. I don't even know if it was in -- yes. Yes.

10 MS. McENTEE: And Lincoln, I don't want to  
11 interrupt your flow, but one thing, I'm noticing some  
12 of the exchange here that I think [REDACTED] is having some  
13 trouble hearing you. He does have hearing problems,  
14 so --

15 MR. BANDLOW: Okay.

16 MS. McENTEE: I just want you to be aware of  
17 that.

18 MR. BANDLOW: I'll try to speak up.

19 A. My one hearing aid battery went dead.

20 Q. Okay.

21 A. This one, if it goes dead I don't hear  
22 anything.

23 Q. I'll try to keep my volume up for you. And  
24 let me know if you don't hear anything I say.

25 A. Thank you.

1 Q. Have you ever had an email address

2 [REDACTED] ?

3 A. Not -- no.

4 Q. Do you know if your son ever had that?

5 A. No, I don't.

6 Q. Have you ever had an email address

7 [REDACTED] ?

8 A. No.

9 Q. Do you ever know if your son has had that

10 one?

11 A. No.

12 Q. Now, have you ever had an email address

13 [REDACTED] ?

14 A. Not to my recollection.

15 Q. Okay. Do you know if your son has ever had

16 that email address?

17 A. No.

18 Q. And have you ever had an email address

19 [REDACTED] ?

20 A. No.

21 Q. Do you know if your son's ever had that

22 email address?

23 A. No.

24 Q. Do you know your son's email address?

25 A. I don't.

1 Q. Okay. Do you know anybody with first  
2 initial [REDACTED] last name [REDACTED] ?

3 A. He was -- yes.

4 Q. Is that a neighbor of yours?

5 A. Yes.

6 Q. Is he still with us?

7 A. No.

8 Q. No? Okay. Do you know someone named [REDACTED]  
9 [REDACTED] ?

10 A. Yes.

11 Q. Is that a neighbor of yours?

12 A. Yes.

13 Q. Okay. Is she still -- is she down the  
14 street or --

15 A. Yes.

16 Q. Okay. Do you have a neighbor named [REDACTED]  
17 [REDACTED] ?

18 A. I don't know.

19 Q. Okay. What about a neighbor named [REDACTED]  
20 [REDACTED] ?

21 A. I don't.

22 Q. [REDACTED] ?

23 A. No. Don't know.

24 Q. [REDACTED] ?

25 A. Don't know.

1 Q. [REDACTED] ?

2 A. I don't know.

3 Q. Okay. [REDACTED] ?

4 A. I don't know.

5 Q. All right. So I'm sorry, your son's middle  
6 name is [REDACTED], correct?

7 A. Yes.

8 Q. Okay. In July of 1999 was your son charged  
9 with driving with a suspended license?

10 A. No.

11 Q. In June of 2002 was he charged with driving  
12 with a suspended license?

13 A. No.

14 Q. Has he ever been charged with driving with a  
15 suspended license that you're aware of?

16 A. No.

17 Q. I want to -- let me see if -- I didn't bring  
18 my pen. Can I borrow your pen for one moment? I want  
19 to ask you, if you could, to draw a diagram of your  
20 house, the rooms in your house. It's a one-story  
21 house?

22 A. Yes.

23 Q. Okay. How many bedrooms?

24 A. Three.

25 Q. Okay. Can you, the best you can, it doesn't



1 have to be a Picasso work of art, but just give me a  
2 sense of where the rooms are in your house?

3 A. It's going to be very scratchy.

4 Q. That's okay.

5 A. I have tremors.

6 Q. Okay. Thank you. And I appreciate it.

7 I'll give that back to you. Okay. So I'm looking at  
8 this and I'm going to, I've got some pre-marked  
9 exhibits, so I'm going to mark this one as Exhibit 30  
10 so I don't -- so I don't -- I'm writing on here  
11 Exhibit 30 so I don't mark it, get two duplicates. So  
12 I do see how you've kind of scratched this out here.

13 (Exhibit 30 marked)

14 Q. On the top left corner, what is that?

15 A. That's --

16 Q. Living room?

17 A. Living room, yeah.

18 Q. Okay. Where is the front door in this?

19 A. That's -- it's FD.

20 Q. FD is here. Okay.

21 A. Yes.

22 Q. The front door is there?

23 A. I need to correct that.

24 Q. Sure.

25 A. Because I -- this is -- this actually goes

1 this way. And that is -- I don't think that that's  
2 going to be --

3 Q. Okay.

4 A. This line is out.

5 Q. Is the door?

6 A. The door. No, the door is where it's  
7 located.

8 Q. Where it says FD?

9 A. That's the entry.

10 Q. And you go in this front door and there's a  
11 front room there?

12 A. Yes. There is a half wall and then a step  
13 down.

14 Q. Okay. And then this thing to the left, is  
15 that the garage?

16 A. The garage.

17 Q. I'm going to write the word garage just a  
18 little more clearly. Okay. So that's your garage.  
19 This is front --

20 A. Room.

21 Q. Room. And then top left. That is the  
22 living room. I'm marking that living room. And  
23 then --

24 A. Kitchen.

25 Q. That's -- okay, that is the kitchen.

1 A. Actually, I forgot --

2 Q. That's okay.

3 A. This -- right there.

4 Q. That's the kitchen?

5 A. Yeah. Like that.

6 Q. Oh, a little hallway into it? I see.

7 A. This is the dining room.

8 Q. Oh, dining room. Sorry. No, no, thank you.

9 So to the right of the living room is the kitchen?

10 A. Yes.

11 Q. Then there's a dining room?

12 A. Yes.

13 Q. And then you've got two rooms on the top

14 right. What are those?

15 A. Bedrooms.

16 Q. Those are both bedrooms?

17 A. Yes.

18 Q. Bedroom and bedroom.

19 A. Yes.

20 Q. And down below is that a bigger bedroom?

21 A. That's the master.

22 Q. That's the master bedroom. Master bedroom.

23 You've got -- what is this over kind of to the --

24 A. That's --

25 Q. -- right?

1 A. That's the brown bathroom.

2 Q. Oh, that's -- okay, that's a bathroom.

3 Gotcha.

4 A. That's what we call it.

5 Q. Master bathroom, probably?

6 A. Yeah. There are other bathrooms.

7 Q. And that's the basic layout of this house.

8 Thank you. And when your son is staying with you  
9 where does he stay?

10 A. In the -- it would be the southwest most  
11 bedroom.

12 Q. Okay. So if we go left to right can we call  
13 this bedroom 1 and bedroom 2?

14 A. Bedroom 2.

15 Q. Okay. So bedroom 1, and he would be in  
16 bedroom 2.

17 A. Yes.

18 Q. Is there anybody that stays in bedroom 1, or  
19 is that just a guest room?

20 A. It's a guest room.

21 Q. Okay. And your wife and you stay in the  
22 master bedroom?

23 A. Yes.

24 Q. Okay. Do you know, about how far away are  
25 each of your neighbors' houses?

1           A.    The [REDACTED] house, it's not the [REDACTED]  
2           anymore, but it's straight across the street. And the  
3           [REDACTED] home are the property -- it's a double property  
4           next to the east, across the street and to the east.

5           Q.    Are there houses on the side of your house?

6           A.    No.

7           Q.    There's not a house on either side of your  
8           house?

9           A.    Yes, there is. There's -- we call it the  
10          [REDACTED] house. It's on the west side. And frankly, I  
11          don't know the last name of the people that moved into  
12          the house on the east side of our house.

13          Q.    Do you know how far away that house to the  
14          side of you is?

15          A.    They're both, I'd say, 30, 40 foot, you  
16          know, whatever the property line.

17          Q.    What is the material your house is made of?  
18          Wood, brick, cement?

19          A.    Wood.

20          Q.    Wood. Okay. Where do you keep your  
21          computers in this house?

22          A.    In the living -- front room. In the front  
23          room.

24          Q.    Aside from your attorneys, has anyone else  
25          helped you with dealing with this lawsuit?

1 Q. Okay. So your last job prior to retiring  
2 you were -- what was your job prior to retiring?

3 A. Deputy sheriff. Sheriff's deputy, I should  
4 say.

5 Q. How long were you a sheriff's deputy?

6 A. Oh, ten years, maybe.

7 Q. Where were you a sheriff's deputy?

8 A. [REDACTED] County.

9 Q. Prior to being a sheriff's deputy what was  
10 your employment?

11 A. I was NC maintenance mechanic for Boeing.

12 Q. Do you have any kind of employment now?

13 A. No.

14 Q. You don't do any form of work from home?

15 A. No.

16 Q. Do you currently repair computers?

17 A. Occasionally.

18 Q. When did you start doing that?

19 A. Probably 1998, maybe.

20 Q. Why did you get into doing that?

21 A. It was something to bide my time. I was  
22 interested in.

23 Q. Do you have any business that repairs  
24 computers?

25 A. No.

1 Q. Just a hobby of yours?

2 A. Hobby.

3 Q. Have you ever been employed by any computer  
4 companies?

5 A. No.

6 Q. And so from -- so you -- how long ago was it  
7 that you worked on a day-to-day basis? Let me scratch  
8 that. When did you retire?

9 A. I believe it was 1982 or '3. I can't  
10 remember the exact date.

11 Q. 1982 or 1983?

12 A. Yeah.

13 Q. And in the last couple of years you've not  
14 had any sort of full-time employment of any kind,  
15 correct?

16 A. No.

17 Q. All right. Are you generally around the  
18 house, or what are you doing with your day to days,  
19 typically?

20 A. I guess generally around the house.

21 Q. Okay.

22 A. I work on a computer every once in a while.

23 Q. What is -- well, you graduated from high  
24 school?

25 A. Yes.

1 Q. What years?

2 A. I went into the Army.

3 Q. Oh, okay. How many years were you in the  
4 Army?

5 A. Three years.

6 Q. And then after that you started working for  
7 Boeing?

8 A. Yes.

9 Q. Okay. And then when did you make a  
10 transition from Boeing to being a deputy sheriff?

11 A. 1972.

12 Q. So were you a sheriff from '72 until '83 or  
13 so when you retired?

14 A. Yes.

15 Q. As a sheriff did you ever have occasion to  
16 work on any kind of cyber crimes or anything of that  
17 nature?

18 A. No.

19 Q. This is before the Internet when you  
20 retired, correct?

21 A. Yes.

22 Q. Do you speak any other languages?

23 A. No.

24 Q. When did you first begin repairing  
25 computers?



1 A. 1998 or '99, in that frame.

2 Q. Was there a reason for you --

3 A. Just to fix them up and resell them.

4 Q. And that's something you to this day  
5 continue to do?

6 A. I'm -- well, within the last year or so I  
7 just started working on a couple of computers for my  
8 niece, to repair them.

9 Q. This is your niece -- your niece is -- how  
10 is your niece related to you? Is that your sons's --  
11 wait, I'm terrible with --

12 A. My brother's daughter.

13 Q. Your brother's daughter, okay. How old is  
14 she?

15 A. Probably 46, 47.

16 Q. Oh. Are there any young children in your  
17 house in the last few years?

18 A. By young --

19 Q. You know, 10 or below, or any children of  
20 that age?

21 A. No.

22 Q. Any early teen kids in the house in the last  
23 few years?

24 A. Well, they've visited, yes. The younger and  
25 the teens have visited. My grandson has stayed at the

1 home on several days.

2 Q. Okay. So let me back up. So you have a  
3 daughter and a son?

4 A. Yes.

5 Q. Okay. Your son [REDACTED], does he have any  
6 children?

7 A. No.

8 Q. Okay. And your daughter, you were kind of  
9 enough to give her name, so let me see. [REDACTED] has  
10 children?

11 A. Yes.

12 Q. How old are her children?

13 A. 18 and 20.

14 Q. Okay, 18 and 20. All right. And one of  
15 those is the grandson you just mentioned?

16 A. Yes.

17 Q. Okay. So is the grandson the 18-year-old?

18 A. Yes.

19 Q. Okay. And the 20-year-old, is that a  
20 granddaughter?

21 A. Yes.

22 Q. Okay. And in the last couple years they've  
23 occasionally stayed over at the home?

24 A. Yes.

25 Q. All right. Do you know if they've watched

1 movies while they were at the home?

2 A. No, I don't.

3 Q. So did you get any kind of training to help  
4 you with this processes of refurbishing computers?

5 A. Not -- not really, no. No.

6 Q. How did you go about learning how to do  
7 that?

8 A. Same way I learned how to take apart a car  
9 motor and put it back together. Just --

10 Q. Tinkering with it?

11 A. Tinkering.

12 Q. Do you have a preference for Apple or PC?

13 A. PC.

14 Q. PC. Do you take apart and refurbish Apple  
15 computers?

16 A. I don't take -- well, can -- I had -- the  
17 only Apple computers that I've worked on, many years  
18 ago I bought six iMacs from Everett Junior College.  
19 And those computers had no operating system. I  
20 installed operating systems on them, gave one away and  
21 sold the rest. I'm currently working on a MacBook Pro  
22 for my niece and her husband. And about two, two and  
23 a half weeks ago I fixed another one of their MacBook  
24 Pros to just get it up and running.

25 Q. Okay. Have you purchased any software

1 licenses in the past year or two?

2 A. Yes.

3 Q. What software licenses have you purchased  
4 that you can recall as you sit here today?

5 A. Windows 7, Windows 8, Windows 10, Avast  
6 Antivirus. Bought that for one year. And I think it  
7 was either Malwarebytes or SUPERAntiSpyware.

8 Q. In the past year how many computers have you  
9 purchased?

10 A. In the past year? I don't know, I'd say 20  
11 to 30. I haven't really kept a record of it.

12 Q. In the past year how many computers have you  
13 sold?

14 A. Probably eight or 10.

15 Q. How many have you given away? You mentioned  
16 earlier you gave some away.

17 A. I've given away probably 120.

18 Q. Over the lifetime of your doing computers?

19 A. Yes.

20 Q. In the past year do you know how many you've  
21 given away?

22 A. Four, I believe.

23 Q. Is there a particular time of day you're  
24 more likely to work on repairing computers?

25 A. Evening.

1 the bills? Does it say [REDACTED]? What does it say?

2 A. I don't know.

3 Q. But it's in your name. Are you the one who  
4 pays for the Comcast bill?

5 A. Yes.

6 Q. Okay. Do you separately pay for cable  
7 television?

8 A. No. It's a single package.

9 Q. Okay. So Comcast provides your cable and  
10 your Internet?

11 A. And phone.

12 Q. And are you still with Comcast?

13 A. Yes.

14 Q. Okay. So between August of 2016 and  
15 December of 2017, during periods of that time your son  
16 lived at the house, correct?

17 A. Yes.

18 Q. Did anybody else in that period of time live  
19 at the house? Obviously besides you and your wife.

20 A. Yes. I'm trying to -- I can't remember when  
21 he moved in, but my brother-in-law [REDACTED], he lived with  
22 us for about three and a half years.

23 Q. You have a sister --

24 A. Wife's --

25 Q. Oh, your wife's --

1 A. Brother.

2 Q. Brother. Okay. So give me the time frame  
3 of when he lived in the house.

4 A. They moved -- from, I believe it was maybe  
5 November of last year for about three and a half years  
6 before that.

7 Q. Oh, okay. So 2014 or '15 he may have moved  
8 in and lived all the way through November of 2018?

9 A. Yeah, maybe.

10 Q. Okay.

11 A. Latter part of maybe '14, I guess. Or '15.

12 Q. When he moved in where did he live? What  
13 room did he live in?

14 A. The guest bedroom.

15 Q. So bedroom number 1 on your chart?

16 A. Yes.

17 Q. And then during that time bedroom number 2  
18 your son was in?

19 A. Yes, when he was here.

20 Q. Okay. And his name, you said, was [REDACTED]  
21 [REDACTED]?

22 A. Yes.

23 Q. Do you know where he works?

24 A. No, he -- he's a commercial plumber.  
25 Seattle, I think.

1 Q. Do you know what company he works for?

2 A. Whoever they -- the union assigns him to  
3 work with. I have no idea who that might be.

4 Q. How old is [REDACTED] ?

5 A. Sixty -- I'd say 63 or '4.

6 Q. Have you ever talked to him about this  
7 lawsuit?

8 A. No.

9 Q. And other than Federal Way, do you have any  
10 other address information for him?

11 A. No. I don't know it.

12 Q. Does he have a middle name?

13 A. I don't know. I'm sure -- I don't know.

14 Q. Did he have -- during the time he lived in  
15 the house did he have a computer in his room?

16 A. No.

17 Q. Did he have a laptop or any kind of  
18 computer?

19 A. Let me expand -- he had a netbook that his  
20 son gave him for about the last six months that he  
21 lived in there. And that computer, or that laptop, or  
22 netbook, was never -- was not operable.

23 Q. How do you know it was not operable?

24 A. I looked at it I wound up fixing it up when  
25 he left.

1 Q. Did [REDACTED] have access to other  
2 computers that were in the home?

3 A. Yes.

4 Q. Okay. What computers did he have access to?

5 A. My desktop.

6 Q. Where was your desktop located?

7 A. In the front room.

8 Q. Okay. So was there a desk and sort of a  
9 computer setup in the front room?

10 A. Yes.

11 Q. And that desktop computer could search the  
12 Internet, could get access to the Internet?

13 A. Yes.

14 Q. Okay. What is the -- is there an  
15 identifying number for that computer?

16 A. Not that I'm aware of.

17 Q. Do you know if that computer's been produced  
18 in connection with this case? Was that given to your  
19 attorneys for production in this case?

20 A. Yes.

21 Q. It was. Were there any other computers that  
22 [REDACTED] had access to while he was staying there?

23 A. No.

24 Q. Your son, does he have a computer in his  
25 room?



1 A. Yes.

2 Q. What kind of computer is that?

3 A. A generic.

4 Q. Is it a PC?

5 A. Yeah, it's a PC.

6 Q. Does it have access to the Internet?

7 A. Yes.

8 Q. Does he still have that in his room?

9 A. No.

10 Q. When --

11 A. We'll, he has a different computer,

12 basically.

13 Q. Okay. So let me back up.

14 A. Okay.

15 Q. From the period of August 2016 through

16 December 2017, did your son have a computer in his

17 room?

18 A. There was a computer in his room, yes.

19 Q. And was that a desktop?

20 A. Yes.

21 Q. And it was a PC?

22 A. A PC.

23 Q. And it had access to the Internet?

24 A. Yes.

25 Q. Okay. And does that computer still exist?

1 Q. So he plays World of Warcraft, right?

2 A. Yes.

3 Q. Are there any other games that you know that  
4 he plays?

5 A. I don't know the names of them. But he  
6 plays other ones, and I don't know the names of them.  
7 There are -- well, I don't know if it will name them,  
8 but he will have -- I mean, there will be records of  
9 when they purchased. Go online to Steam or something  
10 like that and every once in a while they'll have a  
11 special on different games and --

12 Q. How do you know about Steam?

13 A. He has -- I have -- he only has basically  
14 two friends in the world. One of them lives here in  
15 West Seattle and the other one lives in Minnesota,  
16 moved to Minnesota. The main time that he is able to  
17 play games with them is in the late evening through  
18 the morning hours. And when they play games, you  
19 know, if -- [REDACTED] is the gentleman from Minnesota.  
20 They talk and they'll say, hey, there's a cool game or  
21 something that's cheap, and he'll want to buy that  
22 game so they can play.

23 Q. So you've helped him buy games on Steam  
24 sometimes?

25 A. Well, I -- yes, I have --

1 Q. Do you know [REDACTED] last name, the friend in  
2 Minnesota, by any chance?

3 A. I know it. And I can see it, but I can't  
4 say it.

5 Q. What about -- you said he had another friend  
6 in West Seattle. Do you know that person's name?

7 A. [REDACTED].

8 Q. [REDACTED].

9 A. Yes.

10 Q. Do you have any other contact information  
11 for [REDACTED]?

12 A. No.

13 Q. How do you know he's in West Seattle?

14 A. That's where he bought a home.

15 Q. How do you know he bought a home there?

16 A. I took my son to the home for visits  
17 every -- occasionally.

18 Q. Do you know the address?

19 A. No. I don't know. The farther away from  
20 Seattle I am, the better.

21 Q. Okay.

22 A. My son hears from [REDACTED] maybe once  
23 every month and a half or two.

24 Q. Does your son watch movies on his computer?  
25 Ever see him watching movies?

1 issue with it and that he should start turning it off  
2 at night.

3 Q. Okay. Have you ever received a copyright  
4 alert notice from comcast?

5 A. Not that -- other than that one time many  
6 years ago that, I guess that alert notice, I don't  
7 recall having received one.

8 Q. Where am I at here? Let's look at Exhibit 5  
9 for right now. We'll go back to 4 in a second.

10 (Exhibit 5 marked)

11 Q. Exhibit 5, some kind of email from Shop  
12 Goodwill. And that's to you, to [REDACTED], correct?

13 A. Yes.

14 Q. And it's April 29th, 2016, correct?

15 A. Yes.

16 Q. And it looks like you were successful bidder  
17 on a computer, correct?

18 A. Yes. Yes.

19 Q. This HP Pavilion Slimline?

20 A. Mm-hmm.

21 Q. All right. So you purchased that off of --  
22 from Shop Goodwill?

23 A. Yes.

24 Q. Do you know what happened to that computer?

25 A. That Slimline? It was -- it could be one of

1 the ones that I have not sold. Or got rid of.

2 Q. Do you think it's one you still have in your  
3 possession?

4 A. I don't know, without -- I have a lot of  
5 computers in my possession.

6 Q. Okay.

7 A. A lot of computers that were bought from  
8 Shop Goodwill.

9 Q. All right. Let me mark this one next in  
10 order. Or actually, Exhibit 4, since I didn't mark  
11 one yet.

12 (Exhibit 4 marked)

13 Q. Exhibit 4 is a document that was prepared, I  
14 believe, by your counsel talking about the production  
15 of various computers and with devices, et cetera, in  
16 this matter. And if you look at the second page of  
17 that, it lists, it begins to list a number of  
18 computers, laptops, various other things.

19 A. Okay.

20 Q. Do you see on this list a computer that you  
21 would believe is this computer identified in Exhibit  
22 5?

23 A. I don't -- I don't know without -- S5-1204?  
24 I don't see it on here.

25 Q. Okay. Does that help refresh your

1 Q. Okay. And I appreciate your trying to  
2 clarify, but I just now I need to kind of backtrack.

3 A. Okay.

4 Q. So from August 12th, 2016, through December  
5 9th, 2017 --

6 A. Okay.

7 Q. -- in that period of time, was there a  
8 computer that you used?

9 A. Yes.

10 Q. Which computer was that?

11 A. That was an ASUS computer. If it's on the  
12 list here, I think, where is --

13 MS. McENTEE: You're looking for Exhibit 4.

14 BY MR. BANDLOW:

15 Q. If you look at 4, it looks like --

16 A. 4.

17 Q. Are you referring to Bates number 10029 of  
18 that? It's the first page of that. No, no, no. I'm  
19 talking about -- look at the second page of that  
20 document.

21 A. Okay.

22 Q. And then these computers starting on left,  
23 they're numbered. And there's one that says 10029  
24 towards the bottom. That says ASUS. Is it that one?  
25 Is that the one you're talking about?

1 exhibit consists of. And I want to ask you some  
2 questions about some of the documents that are in  
3 there. We can kind of go through it page by page.  
4 This first page on there, it says to Comcast or the  
5 U.S. District Court of the Western District of  
6 Washington. Can you tell me what this was?

7 A. This appears to be a letter that I had --  
8 that I drafted in -- when I was considering trying to  
9 defend myself.

10 Q. Okay. Do you know if you ever actually sent  
11 this to Comcast or the District Court?

12 A. I wouldn't -- I can't remember whether I did  
13 or not.

14 Q. Okay. In point number 4 on that page you  
15 say: "We have had six people living/staying at our  
16 home over the past year who have had access to the  
17 Internet by using our PC or their own laptops." Who  
18 are the six people in your mind when you wrote there?

19 A. My granddaughter, my grandson, [REDACTED],  
20 my brother and his wife,

21 Q. Is that [REDACTED] and [REDACTED]?

22 A. [REDACTED] and [REDACTED]. And my brother-in-law and  
23 his wife, that was [REDACTED] and -- [REDACTED] and [REDACTED]  
24 [REDACTED]. [REDACTED] is deceased. He just passed away just  
25 recently.

1 Q. Okay. Okay. And that's the exhausting of  
2 the six people had you in mind when you wrote this?

3 A. Yes. That's -- now, I'm just saying that  
4 there have been other people, though they've been the  
5 only ones that have spent any, you know, more than a  
6 day or two.

7 Q. All right. And then on point 8 you say: "I  
8 recent contacted Comcast for problem with our Internet  
9 connection and found that they had a computer listed  
10 as being connected to our modem that did not exist in  
11 our home." What is the basis for your saying that?

12 A. I was just looking at -- went to my account,  
13 online account, and they had a computer hooked up on  
14 the line that I could not account for.

15 Q. What was the name of that computer?

16 A. I have no idea right now. I should have  
17 listed it, I imagine, but I don't remember.

18 Q. Did you take a photograph or have any  
19 documents that would support this contention in number  
20 8?

21 A. No, I don't.

22 Q. All right. Then turning to the next page,  
23 "Letter to who it may concern," did you write this as  
24 well?

25 A. Yes.



1 Q. So that's all of those. Have you ever  
2 watched X-rated adult or pornographic movies or live  
3 feeds?

4 A. No.

5 Q. Have you ever been made aware that your son  
6 watches them?

7 A. No.

8 Q. And you had never heard of Strike 3 prior to  
9 this lawsuit?

10 A. Never, no.

11 Q. Have you ever downloaded any movies or  
12 television shows?

13 A. Not myself, no, I don't. I've never.

14 Q. Do you know of anybody in the household  
15 that's done it?

16 A. No.

17 Q. Since you were made aware of this lawsuit,  
18 have you -- I'm going to break this down. Have you  
19 given away computers that were in your possession at  
20 the time you were made aware of this?

21 A. Yes.

22 Q. How many have you given away?

23 A. Five or six.

24 Q. Have you sold some?

25 A. Yes.

1 law enforcement denied wrongdoing, didn't they?

2 A. Oh, yes.

3 Q. And you always looked for information to  
4 verify their denial of that wrongdoing, didn't you?

5 A. Yes.

6 Q. Okay. Now, as part of the discovery you  
7 produced over 100 computer devices, routers or hard  
8 drives, right? Is that correct?

9 A. Yeah, devices, yes.

10 Q. Okay. And I guess your counsel said earlier  
11 you've found some additional ones, so that document  
12 needs to be updated, right?

13 A. Yes. Yes.

14 Q. All right. But the computer you used in  
15 your day to day was the one in the front room.  
16 Correct?

17 A. Yes, it was.

18 Q. Okay.

19 A. That I provided to my attorney.

20 Q. And that computer is on this list?

21 A. I believe so, yes.

22 Q. Can you find 4 in there for me, if you  
23 would?

24 MS. McENTEE: We've already had this  
25 testimony, but we can revisit it if you like.

1 UNITED STATES DISTRICT COURT )  
2 FOR THE WESTERN DISTRICT OF WASHINGTON )

3 I, Mark Hovila, CCR No. 2599, Certified  
4 Court Reporter, certify:

5 That the foregoing proceedings were taken  
6 before me at the time and place therein set forth, at  
7 which time the witness was put under oath by me;

8 That the testimony of the witness, the  
9 questions propounded, and all objections and  
10 statements made at the time of the examination were  
11 recorded stenographically by me and were thereafter  
12 transcribed;

13 That a review of the transcript by the  
14 deponent was requested;

15 That the foregoing is a true and correct  
16 transcript of my shorthand notes so taken.

17 I further certify that I am not a relative  
18 or employee of any attorney of the parties, nor  
19 financially interested in the action.

20 I declare under penalty of perjury under the  
21 laws of Washington that the foregoing is true and  
22 correct.

23 Dated this 19th day of April 2019.

24 

25 Mark Hovila, CCR No. 2599, CM